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10/612,750

07/02/2003

Franklin H. Valade JR.

C4-1184

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06/15/2009

Tyco International LTD
Ip Legal Department
One Town Center Road
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EXAMINER

MULLEN, THOMAS J

ART UNIT

PAPER NUMBER

2612

MAIL DATE

DELIVERY MODE

06/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/612,750 | VALADE ET AL. | |
| | Examiner | Art Unit | |
| | /Thomas J. Mullen/ | 2612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-17,19-25,27-37 and 39-52 is/are pending in the application.
- 4a) Of the above claim(s) 49-52 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25,27-33,35-37 and 39-48 is/are allowed.
- 6) ☒ Claim(s) 11-13 and 34 is/are rejected.
- 7) ☒ Claim(s) 1,2,4-10,14-17 and 19-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The amendment filed 4/22/09 has been fully considered.
2. Claims 49-52 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/18/05.
3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed 7/2/03 fail to comply with 37 CFR 1.84 and are "informal"; for example, (i) certain lines and/or reference characters and/or descriptive matter in the figures are of non-uniform thickness, darkness, height, etc. (note 37 CFR 1.84, parts (l) and (p)(3)), (ii) the numbering of the drawing sheets must appear at the top of each sheet, rather than on the side (note 37 CFR 1.84, part (t)), and (iii) each drawing sheet has "photocopy" marks on it (i.e., a grayish line along one border thereof, and other stray marks).

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-2, 4-17 and 19-24 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 4, 5 and 8 (see e.g. the next-to-last line of claim 1), "said clamp body" lacks clear antecedent basis; note claim 2.
6. Claims 11-13 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 11, line 2, it is unclear if "a second edge" refers to the same "edge" as "a second edge of said linear clamp" at the end of claim 10. Put another way, in claim 11 it is unclear which element's "second edge" is being referred to.

Claim 13, lines 2-4, "a first distance between a first end of said jaw open area being less than a second distance between a second end of said jaw open area" is vaguely worded and/or indefinite as there is only a single element (or point of reference) occurring after each instance of "between", rather than two elements (or points of reference) between which a "distance" would be measured. Put another way, it is not seen how "a first end of said jaw open area" (or, likewise, "a second end of said jaw open area") constitutes two elements (or points of reference) between which a "distance" would be defined.

Claim 34 is vaguely worded and/or indefinite for the same reason discussed above with respect to claim 13.

7. Claims 1-2, 4-17, 19-24 and 34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and/or the objection(s) under 37 CFR 1.75(a), set forth in this Office action.

Claims 25, 27-33, 35-37, 39-48 are allowed.

8. Applicant's arguments filed 4/22/09 have been fully considered but they are not persuasive.

Drawings

Applicant asserts that "the drawings in their current form are sufficient to satisfy the requirements for drawings set out in the MPEP", without pointing to any specific portion of the MPEP to support his position. The relevant portions of 37 CFR 1.84 (at least parts (l), (p)(3) and (t)) state:

(l) *Character of lines, numbers and letters.* All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black..., sufficiently dense and dark, and uniformly thick and well-defined.

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(p) *Numbers, letters, and reference characters.*

(3) Numbers, letters, and reference characters must measure at least .32 cm. (1/8 inch) in height.

(t) *Numbering of sheets of drawings.* The sheets of drawings should be numbered in consecutive Arabic numerals, starting with 1.... These numbers, if present, must be placed in the middle of the top of the sheet, but not in the margin.

Applicant's drawings are considered deficient as to the character or appearance of at least the reference numerals in the various figures, i.e. the reference numerals (or the lines forming such numerals) are not "durable, clean, black..., sufficiently dense and dark, and uniformly thick and well-defined". Further, some of the reference numerals are not at least 1/8 inch in height (also, in many cases, the individual digits within a given reference numeral are of different heights). In addition, the sheet numbers are on the side of the sheet, rather than at the top of the sheet, on sheets 1-3, 5, 7 and 9. Finally, each sheet of drawings contains stray marks or lines (typically caused by photocopying).

Claims 13 and 34 (112)

Applicant asserts that "the facing edges forming the jaw open area may have varying distance between them at varying points on the length of the jaw open area" (emphasis added). However, this is not what is recited in claims 13 and 34; i.e., these claims have the phrases, "a first distance between a first end of said jaw open area" and "a second distance between a second end of said jaw open area", and do not mention the "facing edges". It is maintained that the way the claims are worded, "a first end of said jaw open area" is merely a single point or location, and likewise "a second end of said jaw open area" is merely a single point or location (with respect to which other objects/"points", or other "locations", may be a measurable distance away).

Defining a "distance between" one point or location and another point or location, requires that some "other point or location" be specified in the claims, in order for the claim language to make sense. If the claimed "first end" and the claimed "second end" are each in fact intended to represent two different points or locations between which a "distance" may be defined--in particular, the facing edges at the "first end" and the facing edges at the "second end"--then the claims should be amended to clarify this.

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9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi, can be reached on (571) 272-7664. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Thomas J. Mullen/
Primary Examiner, Art Unit 2612